

**COMMONWEALTH OF MASSACHUSETTS**

**SUFFOLK, ss.**

**BUILDING CODE APPEALS BOARD  
DOCKET NO. 11-994**

\_\_\_\_\_  
ARE-MA Region No., 45, LLC,  
Appellant

v.

\_\_\_\_\_  
City of Cambridge,  
Appellee  
\_\_\_\_\_

**BOARD'S DECISION ON APPEAL**

**Introduction**

This matter came before the State Building Code Appeals Board ("Board") on Appellant's appeal application filed pursuant to G.L. c.143, §100 and 780 CMR 122.1 ("Application"). Appellant is seeking variances from 780 CMR 415.3.1, 602, and 705.8 (8<sup>th</sup> Edition of the State Building Code) with respect to the construction of a new high-rise research laboratory building located at 100 Binney Street, Cambridge, MA ("Project").

**Procedural History**

On or about March 15, 2011, the Inspectional Services Department for the City of Cambridge denied building permit applications for the Project, based on the following issues: (1) 780 CMR 415.3.1 requires the Project to be located at least 30 feet from lot lines; (2) 780 CMR 602 does not allow non-rated exterior walls; and (3) 780 CMR 705.8 does not allow 100% unprotected openings. The Board convened a public hearing on May 17, 2011, in accordance with G.L.c. 30A, §§10 & 11; G.L.c. 143, §100; 801 CMR 1.02; and 780 CMR 122.3. All interested parties were provided an opportunity to testify and present evidence to the Board.

During the May 17, 2011 hearing, the Board considered a motion to allow a variance from 780 CMR 602 regarding the proximity of the exterior walls to the adjacent interior lot lines based on the following: the Project will provide a fire separation distance to the interior lot lines on the east wall at elevations located above the roof level of a building at 41 Linskey Way (which abuts the site) varying from greater than 20-feet to approximately 27 feet. The owners of the 41 Linskey Way parcel and the 100 Binney Street parcel have entered into an easement agreement resulting in open space between the buildings, as well as the air rights above the 41 Linskey Way building being designated as "no-build" zones ("Easement"). This motion was approved by a unanimous vote.

Next, the Board considered a motion to allow a variance from 780 CMR 705.8 also based on the Easement. This motion was approved by a unanimous vote.

With respect to the request for the variance from 780 CMR 415.3.1, the Board continued the hearing to July 7, 2011 to allow Appellant to provide additional information and to include consultation with the City of Cambridge Fire Department.

On July 7, 2011, the hearing resumed. Appellant provided a letter, dated June 8, 2011, from Hughes Associates, Inc. to Lt. Chris Towski of the Cambridge Fire Department, which detailed the reasons for the requested variance from 780 CMR 415.3.1 and the proposed mitigation measures ("Letter"). Rather than reiterate the contents of the Letter, it is incorporated herein by reference, and made a part hereof. The City of Cambridge concurred with the Letter.

Accordingly, the Board considered a motion to allow the variance from 780 CMR 415.3.1, based on the Letter and on the City not opposing the variance. This motion was approved by a unanimous vote.

### **Conclusion**

The Board approved the above-described three motions for variances. The motions were **approved** by unanimous votes.



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H. Jacob Nunnemacher

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Douglas A. Semple, Chair

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Alexander MacLeod

*Any person aggrieved by a decision of the State Building Code Appeals Board may appeal to Superior Court in accordance with G.L. c.30A, §14 within 30 days of receipt of this decision.*

DATED: October 11, 2011